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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Implementation of Sections of the
Cable Television Consumer Protection
and Competition Act of 1992:
Rate Regulation

Leased Commercial Access

CS Docket No. 96-60

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To: The Commission

OPPOSITION TO PETITIONS FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's rules, ValueVision International, Inc. ("ValueVision") files this opposition to the petitions for reconsideration filed by TCI, Cable Television Operators, and InterMedia/Armstrong.

I. PETITIONERS HAVE PRESENTED NO BASIS FOR DELAY
IN PROVIDING LEASED ACCESS RATE INFORMATION.

Petitioners urge the Commission to extend from 7 business days to 15 business days (or 30 days) the time period for responding to requests for leased access rate information. Neither TCI nor the Cable Television Operators provide any justification for such an extension, other than their generalized assertions that the seven day period is "unnecessarily short and burdensome."

As ValueVision has previously demonstrated, it is no burden for a cable operator to provide promptly information that

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the rules require it to have collected already. And it is no answer for InterMedia/Armstrong to say that they have not assembled rate information because no one has asked them for it. This is particularly so in light of InterMedia/Armstrong's record of failing to respond to ValueVision's repeated requests for such information.^{1/} In fact, the 7 business day requirement is even longer than the analogous 7 day requirement for providing rate information to political candidates. See 47 C.F.R. § 76.305(d). The 7 business day requirement has not been shown to be unreasonable, is clearly necessary in providing information on a timely basis in light of past cable operator conduct as described by the Commission, and is fully consistent with the statutory goal of making leased access a genuine outlet for leased access programmers.^{2/}

^{1/} See Reply Comments of ValueVision at 30 n.93:

"InterMedia failed to respond to all four of ValueVision's inquiries for leased access rate information, which were sent in May 1993, November 1993, May 1995, and November 1995. ValueVision originally requested rate information from Armstrong in April 1993 but received no response. After receiving a second such request in November 1993, Armstrong responded by asking what type of programming ValueVision provides (although ValueVision's first letter had made the answer to this question clear) and refusing to provide the number of subscribers on their systems. Armstrong did not respond to ValueVision's letter answering its questions or to two subsequent letters."

^{2/} Nor do InterMedia/Armstrong provide any rational basis for conditioning the provision of rate information on supplying information to the operator. As noted above, based on ValueVision's experience this proposal would be fraught with obvious potential for abuse and delay, despite InterMedia/

(continued...)

Nor does TCI provide any basis for eliminating the requirement to provide the programmer with information as to how many leased access channels are available on the system. This information is readily known to the operator, easy to provide together with the rate information, and important to help the programmer monitor the operator's compliance with the 10-15% set aside requirement.

II. THE COMMISSION PROPERLY INCLUDED RETRANSMISSION
CONSENT STATIONS AS PART OF CHANNEL CAPACITY
AVAILABLE TO MEET LEASED ACCESS CHANNEL REQUIREMENTS.

As the Commission has noted (§ 54), the Cable Act requires that 10-15% of "channels not otherwise required for use by federal law or regulation" be devoted to leased access. 47 U.S.C. § 532(b)(1). Retransmission consent stations plainly do not fall into this category, because federal law does not require cable operators to carry them. Quite the contrary; it prevents them from doing so without the station's consent. See id. § 325(b). The plain meaning of the statute thus requires that these channels be included in available channel capacity. Moreover, the purpose of leased access is to devote a relatively small portion of available channel capacity to unaffiliated programmers at reasonable rates. Retransmission consent stations represent available capacity, because cable operators have no compulsion under federal law to carry them.

^{2/}(...continued)

Armstrong's protestations of "good faith." It is also wholly unnecessary. As with political candidates, the "negotiation" process begins only after the rates are provided and the programmer finds them lawful and affordable.


III. THE COMMISSION SHOULD NOT MODIFY ITS SECURITY
DEPOSIT POLICIES.

The Commission's order clarifies (at ¶ 53) that "operators may not demand a security deposit for channel time from a [full-time] programmer that pays the full [monthly] rate in advance." It also makes clear that determinations of what is a "reasonable" security deposit will be made on a case-by-case basis, in light of specific factors identified by the Commission. Id. The petitions for reconsideration do not specify any relief they seek here, and we do not understand TCI (at p. 50), the Cable Television Operators (pp. 24-25), or any other petitioner to be challenging these or any other aspects of the Commission's security deposit policy. The Commission's clarifications are particularly important given the history of efforts to use security deposits and other requirements to impede leased access, and the statutory command to make leased access a genuine outlet for leased access programmers.

CONCLUSION

For the foregoing reasons and in the foregoing respects, the petitions for reconsideration should be denied.

Respectfully submitted,


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July 3, 1996

CERTIFICATE OF SERVICE

I, William R. Richardson, Jr., hereby certify that on this 3d day of July, 1996, I caused to be delivered by first-class mail, postage prepaid (and by hand where indicated) copies of the foregoing "Opposition to Petitions for Reconsideration," to the following:

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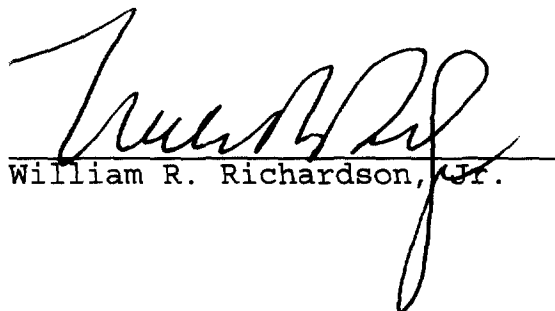
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